

SUBSTITUTE ORDINANCE NO. 10-91

By: John H. Offenberg

AN ORDINANCE AWARDING TO AMERICAN TELEVISION AND COMMUNICATIONS CORPORATION d/b/a/ ALL-AMERICAN CABLEVISION A FIFTEEN (15) YEAR NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OWN, OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY OF BEXLEY, OHIO; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF SAID FRANCHISE; PROVIDING FOR CITY REGULATION AND USE OF THE CABLE COMMUNICATIONS SYSTEM; PRESCRIBING PENALTIES FOR VIOLATION OF THE ORDINANCE.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

SECTION 1

DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "City" is the City of Bexley.
- B. "Cable Communications System", hereinafter referred to as "CATV System" or "System", means a system of coaxial cables or other electrical conductors and transmission equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and other related services and transmit them to subscribers for a fee.
- C. "Company" or "Grantee" shall be American Television and Communications Corporation d/b/a All-American Cablevision or anyone who succeeds it in accordance with the provisions of this Ordinance.
- D. "Person" is any person, firm, partnership, association, corporation, Company or organization of any kind.

## SECTION 2

### GRANT OF NON-EXCLUSIVE FRANCHISE

The City hereby grants to the Company the non-exclusive franchise, right, privilege, authority and easement for a period of three (3) years from the effective date hereof, which period shall be automatically extended for an additional twelve (12) year period as provided herein, unless sooner terminated pursuant to the provisions of this Ordinance, to construct, erect, suspend, install, renew, maintain and otherwise own and operate throughout the City in, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places as now laid out or dedicated, and all extensions thereof, and additions thereto, in the City a system of poles, wires, cable, underground conduits, ducts, trenches, conductors, amplifying equipment, manholes, fittings and any and all other fixtures, appliances and appurtenances necessary for the installation, ownership, maintenance and operation in the City of a Cable Communications System either separately or in conjunction with any public utility maintaining the same in the City.

This franchise shall further include the right, privilege, easement and authority to construct, erect, suspend, install, lay, renew, repair, maintain and operate such poles, wires, cables, underground conduits, manholes, ducts, trenches, fixtures, appliances and appurtenances for the purpose of distribution to inhabitants within the limits of the City, without limiting the generality of the foregoing, this franchise shall and does hereby include the right, in, over and upon the streets, sidewalks, alleys, easements, public grounds and places in the City for the purpose of installing, erecting, operating or in any other way acquiring the use of, as by leasing, all poles, lines and equipment necessary to operate a CATV system and the right to make connections to subscribers, the right to repair, replace and enlarge and extend said lines, equipment and connections. The rights are granted herein by the City with due consideration to the legal, character, financial, technical and other qualifications of the Company, and the adequacy and feasibility of its construction arrangement, in a full public proceeding, and the City approved the Company's qualifications as a part of said public proceeding affording due process. Company agrees that it will not erect any new poles under the authority of this Section until the location has been approved by the Service Director of the City.

The Company shall at its expense, install conduit and/or cable at the same time, and in conjunction with, the installation or relocation of other utility facilities underground within the City.

### SECTION 3

#### COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Company shall at all times during the life of this Ordinance be subject to all lawful exercise of the police power by the City and to such reasonable regulation by the City as the City shall hereafter provide. The Company shall comply with all laws, statutes, codes, ordinances, rules or regulations applicable to its business including those of the Federal Communications Commission, and will comply with Equal Employment Opportunity Act.

### SECTION 4

#### EFFECTIVE DATE AND TERM

This Ordinance shall take effect and be in full force after passage and publication hereof, as provided by law, and said Ordinance shall continue in full force and effect for a term of three (3) years upon the terms and conditions set forth herein. If the Grantee shall complete the upgrade of the System specified in Section 7 within three (3) years of the effective date hereof, then the franchise granted hereby shall automatically be extended for an additional period of twelve (12) years, thereby providing a term of fifteen (15) years from the effective date of this Ordinance. If the Grantee does not complete the upgrade within such three (3) year period, the franchise granted hereby will terminate three (3) years from the effective date hereof, unless extended by Council. This Ordinance, when accepted by the Company, shall be and become a valid and binding contract among the City and the Company, but this Ordinance shall be void unless the Company shall, within thirty (30) days after passage and publication of same by the City, file with the clerk of Council of the City of Bexley its unconditional acceptance of the Ordinance, as hereinafter provided.

### SECTION 5

#### TERRITORIAL AREA INVOLVED

This Ordinance is related to the present territorial limits of the City and to any area henceforth added thereto during the term of this agreement; provided, however, that the Company shall not be required to build those sections of the City that do not meet its general density standard of forty (40) homes per strand mile of cable. The Company shall be required to provide service at regular rates to all structures which are not covered under Section 9 of this Ordinance, within one hundred

fifty (150) feet of its trunk lines. Nothing herein contained is intended to preclude the Company from extending its cables and equipment outside the City for the purpose of serving other areas provided the Company is legally enfranchised to serve the other areas.

## SECTION 6

### LIABILITY AND INDEMNIFICATION

- A. The Company shall pay and by its acceptance of this franchise the Grantee specifically agrees that it will pay damages and penalties which the City may legally be required to pay as a result of granting this franchise. These damages and penalties shall include, but not be limited to, all damages arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.
- B. The Company shall pay and by its acceptance of this franchise specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties indicated in subsection (A) above. These expenses shall include, but not be limited to, all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or any employees of the City.
- C. The Company shall maintain throughout the term of this Ordinance public liability and property damage insurance insuring the City and the Company in the minimum amounts of:
1. One Million Dollars (\$1,000,000) for bodily injury or death to any one person, with a minimum of Two Million Dollars (\$2,000,000) for bodily injuries or death resulting from any one occurrence.
  2. One Million Dollars (\$1,000,000) for property damage in any one occurrence, and not less than Two Million Dollars (\$2,000,000) aggregate in any single policy year.
- D. The Company shall maintain, and by its acceptance of this Ordinance specifically agrees that it will maintain, a construction bond running to the City in the penal sum of Twenty-Five Thousand Dollars (\$25,000), which bond shall be approved by the City

Attorney. This bond shall be in force from the start of the upgrade of the cable system and shall continue in force until the upgrade is completed.

- E. The Company shall maintain, and by its acceptance of this Ordinance specifically agrees that it will maintain, a performance bond running to the City in the amount of Ten Thousand Dollars (\$10,000) guaranteeing the faithful performance of the obligations of the Company under the terms of this Ordinance, which bond shall be approved by the City Attorney.

## SECTION 7

### UPGRADE OF SYSTEM

The Company shall conduct an upgrade of the System to 77 channel capable, 550 MHz, with at least 45 channels programmed. The upgrade shall be completed within three (3) years from the effective date of this Ordinance.

## SECTION 8

### SERVICE STANDARDS AND REQUIREMENTS

The Company shall maintain its service in accordance with the best accepted standards of the industry, so as to provide its subscribers with the highest possible level of quality and reliability. The Company shall report annually, within ninety (90) days of the end of the Company's fiscal year, on the status of its operations in the City, including its performance in relation to its own performance standards and generally recognized performance standards in the cable industry. The Company shall adopt and maintain on file with the City, and update within thirty (30) days of any material change, standards for the following areas:

1. Service call rate,
2. Not at home service calls,
3. Outages,
4. Picture quality,
5. Level of telephone service,
6. All trunks busy,
7. Telephone call abandonment,

8. Response time to customer correspondence,
9. Billing practices, including rates and late charges.

The Company shall, at the request of the City, no more frequently than once every twelve (12) months survey its subscribers within the City regarding programming preferences and the operation of the System.

The Company shall appear at a public meeting annually scheduled by the City to review the report and customer survey described above and to receive input from the public.

The System shall meet all applicable FCC radiation specifications as provided for in Paragraph 76.605(a)(12) of the Commission's rules. Conformance to said standards will ensure non-interference with any other type of communications system operating in or near the City of Bexley.

## SECTION 9

### INTERRUPTION OF SERVICE

- A. The Company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Whenever it shall be necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Company shall do at such time as will cause the least amount of inconvenience to its subscribers and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its subscribers.
- B. In the event of any interruption of service whether planned or unforeseen, the Company shall proceed with due diligence and restore service as quickly as possible under the circumstances.

## SECTION 10

### SPECIAL SERVICES

- A. Schools and Educational Uses. The Company shall furnish, upon request, one drop or outlet free of charge for local school systems, the Bexley Public Library, municipal offices or agencies within its service area and not more than one hundred fifty (150)

feet from the Company's existing service facilities. One free channel will be made available for shared use to local educational authorities in all communities served by the Company within Franklin County, Ohio, in accordance with FCC regulations. The channel will be available for Company's use when not in use by local educational authorities.

- B. Municipal and Educational Institutions. All public school buildings and private school system buildings located in the City, as requested, will be connected to the system, including one (1) free connection to each campus building of Capital University that is connected to the underground tunnel system of Capital University. The Bexley Municipal Building will be connected to the system, and the Company will provide both the Bexley Municipal Building and Capital University with modulator and reverse channel to permit the origination of programs from both the Municipal Building and from Capital University. Initial connections to each building will be made free of charge, and additional connections will be made for the cost of items and materials only. Standard service will be provided free of charge at all times provided to all public, parochial and private schools and to all municipal buildings provided such buildings are passed by cable.
- C. City Emergencies. In case of an emergency or a disaster, the Company shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster period.
- D. City Government. The Company will designate one (1) free channel for shared-use by and for the city government in Franklin County, in accordance with FCC regulations.
- E. Community Interest Groups. The Company will designate one (1) free channel for shared-use for programming by and for community interest centers and minority groups, including free access for the public expression of community opinions.

## SECTION 11

### SAFETY REQUIREMENTS

- A. The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failure and

accidents which are likely to cause damage, injuries or nuisances to the public.

- B. The Company shall install and maintain its wires, cables, fixtures and other equipment in accordance with the requirements of the National Safety Code and local ordinances which are applicable.
- C. All structures and all lines, equipment, and connections in or over, under and/or upon the streets, sidewalks, alleys and public ways or places of the City wherever situated or located, shall be kept and maintained at all times in a safe, suitable, substantial conditions and in good order and repair.
- D. The Company shall at all times maintain a sufficient staff of employees to fill all its obligations under the Ordinance.

## SECTION 12

### NEW DEVELOPMENTS

The Company shall promptly advise the City of any material changes in federal law or Federal Communications Commission regulation affecting this Ordinance and the franchise granted hereby. It shall be the policy of the City to amend this Ordinance upon application of the Company, when and to the extent necessary, to enable the Company to comply with changes in Federal Communications Commission regulations, and to take advantage of any developments in the field of transmission of television signals and related services which will afford it an opportunity more effectively, efficiently or economically to serve its customers. Such amendments shall be made by the City within one (1) year from the date of such changes in FCC rules and regulations.

## SECTION 13

### CONDITIONS ON STREET OCCUPANCY

- A. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners whose land may adjoin any of the said streets, alleys or other public ways and places.



- B. In case of disturbance of any streets, sidewalk, alley, public way, or paved area, the Company shall, at its own cost and expense and in a manner approved by the City's Building Inspector, replace and restore such street, sidewalk, alley, public way, or paved area in as good condition as before the work involving such disturbance was done.
- C. If at any time during the period of this Ordinance the City shall lawfully elect to alter or change the grade or alignment or rerouting of any street, sidewalk, alley or other public way, the Company, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at its own expense.
- D. Any poles or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.
- E. The Company shall have the authority, under the supervision of the City's appropriate authority, to trim trees upon and overhanging streets, alleys, sidewalks and public ways and places of the City as to prevent the branches of such trees from coming in contact with the wires and cable of the Company.
- F. The Company shall, at the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the building. The expense of such temporary removal, raising or lowering of wires, shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire change.

#### SECTION 14

##### PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

The Company shall not, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant an undue preference or advantage within a given class of subscribers; provided however, nothing contained herein shall prohibit the Company from waiving, reducing, or suspending installation or monthly service fees for specific or undetermined periods of time for marketing or promotional purposes.

SECTION 15

REMOVAL OF FACILITIES UPON REQUEST

Upon termination of service to any subscriber, the Company shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

SECTION 16

TRANSFER OF ORDINANCE

The Company's obligations under this Ordinance shall not be transferable nor assignable without the written consent of the City, which consent shall not be unreasonably withheld.

SECTION 17

GROSS REVENUE

Within ninety (90) days of the end of the Company's fiscal year, the Company shall file with the City a report showing monthly service fees received by the Company from subscribers throughout the City since the preceding report.

SECTION 18

FRANCHISE FEE

The Company shall pay to the City on an annual basis a sum equal to three percent (3%) of the total monthly subscription revenues from subscribers in the City of Bexley, Ohio, for the provision of cable television service. Council, by majority vote, may increase or decrease such franchise fee, but such change shall not go into effect until ninety days after written notice is provided to the operator. Such fee shall not exceed five (5) percent of total subscription revenues. Each annual payment shall be made within ninety (90) days after the end of the Company's fiscal year and shall accompany the report required pursuant to Section 17 of this Ordinance.

SECTION 19

CITY RIGHTS IN ORDINANCE

- A. The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable agreements, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the right herein granted.
- B. The City shall have the right, during the life of this Ordinance, to install and maintain free of charge upon the poles of the Company any wire and pole fixtures necessary for a police alarm system, or traffic control system on the condition that such wire and pole fixtures do not interfere with the CATV operation of the Company.
- C. The City shall have the right to inspect the books, records, maps, plans and other like materials of the Company at any time during normal business hours.
- D. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Ordinance and make such inspections as it shall find necessary to insure compliance with the terms of this Ordinance and other pertinent provisions of law.
- E. At the expiration of the term for which this franchise is granted or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the CATV system from all public ways within the City.

SECTION 20

MAPS AND PLATS

The Company shall, upon request, file with the City Clerk true and accurate maps of plats of all existing installations.

SECTION 21

FORFEITURES OF ORDINANCE

If the Company shall fail to comply with any of the provisions of this grant or shall in any of its undertakings or obligations hereunder and shall fail within thirty (30) days after receipt of written notice from the City of Bexley, Ohio to correct such default or non-compliance, then the City shall have the right, after a full and complete hearing, to revoke any or all rights and privileges granted hereunder provided, however, that default or non-compliance resulting from factors beyond the reasonable control of the Company shall not be sufficient grounds for revocation. In the event the Company files for bankruptcy, the appointment of a receiver, or makes an assignment for the benefit of creditors, the foregoing thirty (30) days provision shall not apply.

SECTION 22

SIGNAL CARRIAGE

It will be the policy of the Company to provide on the cable a broad selection of television signals.

SECTION 23

ERECTION, REMOVAL AND COMMON USER OF POLES

Poles or other wireholding structures may be erected on public land by the Company subject to the approval of the Service Director with regard to location, height, type and any other pertinent aspects.

SECTION 24

RATES

- A. In its rates, charges, service facilities, rules, regulations or in any other respect, the Company shall not make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage with the same classifications of service. The Company shall have the right to establish different classifications of service for residential and commercial users and to adopt charges and rate schedules to which any subscriber within said classifications shall be entitled. All such

modifications in the Company's rate structure shall be subject to City approval to the extent allowed under applicable state and federal law.

- B. The schedule of subscriber charges to be paid by citizens of Bexley shall be maintained on file with the City.
- C. The Company retains the right to request of the City an increase in subscriber rates during the period of the Ordinance and any renewals thereof to the extent City consent is required. The City shall respond to such rate increase requests within one hundred twenty (120) day of the request for such increase by the Company by scheduling a public hearing. In the event the City does not respond to such request within such 120 day period, the Company shall be free to increase the rates to amounts requested on the one hundred twenty-first (121) day after the day of such request.

#### SECTION 25

##### SYSTEM SECURITY - TAMPERING WITH CATV EQUIPMENT

The Company shall have the right at all times to take any and all legal action it deems necessary to preserve the security of its community antenna television system and to assure appropriate use thereof by its subscribers. In addition to the foregoing rights reserved to the Company, any person who willfully or maliciously damages, or causes to be damaged, any wire, cable, conduit, apparatus or equipment of the Company, or who commits any act within intent to cause damage to any wire, cable, conduit any sire or device to a wire, cable, conduit or equipment of the Company within intent to obtain a signal or impulse therefrom without authorization of the Company, shall be guilty of a misdemeanor of the fourth degree. Punishment shall be as provided in Section 698.02 of the Codified Ordinances.

#### SECTION 26

##### MAINTENANCE OF OFFICE

The Company will maintain an office in Franklin County, Ohio open during business hours, available by telephone on a non-toll call basis from the City of Bexley.

SECTION 27

DESIGNATION OF RESPONSIBLE CITY OFFICIAL

The City hereby designates the Service Director as the person who will receive customer complaints and discuss them with the Company.

SECTION 28

SEPARABILITY

If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 29

DURATION AND ACCEPTANCE OF THIS ORDINANCE

- A. This Ordinance and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage and publication hereof, as provided by law, and any franchise permitted or operated hereunder shall continue in full force and effect for the term specified in Section 3 hereof provided that within thirty (30) days after the date of the passage of this Ordinance, the Company shall file with the City Council its unconditional acceptance of the franchise and promise to comply with and abide by all of its provisions, terms and conditions. Such acceptance and promise shall in writing duly executed and sworn to, by the appropriate officials of the Company before a notary public or other officer authorized by law to administer oaths.
- B. Should the Company fail to comply with Subsection (A) above, it shall acquire no rights, privileges or authority under this Ordinance whatsoever.

SECTION 30

This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: April 9, 1991

  
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President of Council

Attest:

  
\_\_\_\_\_  
Clerk of Council

Approved: April 9, 1991

  
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David H. Madison, Mayor

Feb. 26, 1991 - 1<sup>st</sup> reading  
Mar. 12, 1991 - 2<sup>nd</sup> reading  
Mar. 19, 1991 - 3<sup>rd</sup> reading - tabled  
April 9, 1991 - substituted & adopted